IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 873 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD ILIYAS ABDULMIYA SHAIKH

Versus

STATE OF GUJARAT

Appearance:
MR JM BUDDHBHATTI for Appellant
MR KG SHETH, APP for Respondents

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 25/06/2002

ORAL JUDGEMENT (Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal by the accused challenging the judgment of conviction and sentence in Atrocity Case No.

2 of 2001, wherein he has been convicted under Sections 326, 324, 506 of the IPC, but was acquitted in respect of Sections 504 IPC and Section 3(2)(5) of the Atrocity Act, and sentenced to RI for life with fine of Rs. 1,000/- for conviction under Section 326 and other lesser punishments for the conviction under other provisions.

2. In this context, we have heard learned counsel for the appellant, carefully perused the impugned judgment and we have referred to such evidentiary material on record, to which our attention has been drawn. The record and proceedings of the Sessions Court are available.

3. As a result of this exercise, we find that the accused had, in fact, as proved and established by the prosecution evidence on record, on 11th November, 2000 at about 3.00 p.m. in the City of Baroda near Renbasera Naka, thrown acid on Padmaben Babubhai Solanki on her face, both hands, stomach, thigh and on or around the left and right hands shoulder, and had by the same act, thrown acid on Babubhai Raijibhai Solanki on his face, chest and stomach, and by the same act had thrown acid on Niruben Babubhai on her right thigh legs and the top portion of her body and had also by the same act had thrown acid on Rajeshbhai Shanabhai Solanki on the right of his neck, both hands and other portions of the body, and had thereby caused permanent disfigurement to all these persons and had, therefore, committed the offences for which he was charged.

4. We have no hesitation in holding that the prosecution has proved beyond reasonable doubt that the accused who was known to the injured Padmaben, inasmuch as the accused was a co-employee with the injured complainant's husband Babubhai with the Municipal Corporation, that the accused was on familiar terms with the injured Padmaben, and that a few days after Diwali the accused accosted the injured Padmaben and addressed her in indecent and insulting terms suggesting that she should accept his indecent proposals, other wise, "he would take care of her" but that the injured did not narrate this incident to others on account of her acute embarrassment and went home. Since the husband of the injured complainant was sick and remained at home, the injured complainant used to go for duty alone, whereupon on 11.11.2000 at about 3.00 p.m. the injured complainant, her husband Babubhai, daughter Niruben and nephew Rajeshbhai were near Bavanchal Naka, when the accused came running with the glass full of acid in his hand and accosted the injured complainant, addressed her

in abscene terms and thereupon threw the glass full of acid on the injured complainant and her aforesaid family members.

5. The fact that the injured complainant Padmaben and the aforesaid members of her family were severely burnt by acid, and that they were given appropriate medical treatment, is established by the medical evidence on record of the SSG Hospital of Baroda. The fact that the complainant injured had suffered from acid burns together with her family members, as aforesaid, is also established by the medical evidence on record.

The injured husband of the complainant has also been examined at Exh. 16 and fully supports the prosecution case. He also identifies the accused who was known to him.

6. The fact that the complaint was lodged one hour after the time of the incident, does not in any way militate against the prosecution inasmuch as where the complainant and her family members had serious acid burns, it is but natural that they would take emergency medical treatment before filing the complaint. However, it is established from the evidence on record that immediately after sustaining the acid burns, the injured complainant as also her aforesaid family members immediately got a rickshaw and went to the hospital where they were given treatment.

The further fact that other persons who were passersby on the road have not been examined as prosecution witnesses is not relevant. It does not in any manner detract from the sound and acceptable evidence led by the prosecution. In any case, it is well accepted that persons who by coincidence becomes witnesses, who are not known to or related to the injured, normally, are not willing to become witnesses to give evidence in court due to the inconvenience caused to them and the enimity and displeasure they would incur from the accused.

7. The other minor inconsistencies suggested by the defence do not in any way militate against the evidence of the prosecution, the fact that the glass in which the acid was carried by the accused was not preserved as evidence by the prosecution, does not in any manner detract from establishing the actual incident. It is quite probable that after using the glass as container for the acid and after throwing the acid upon the complainant and her family members, the accused might have dropped the glass on the road, which may have broken

or some passerby might have removed it to the edge of the road, so that the glass pieces may not cause further injuries to other passersby.

8. What is significant is while the prosecution has examined the injured complainant as also her injured husband, no suggestion has been put forward by the defence that the accused has been falsely implicated on account of any earlier enimity between them, or for any other cause.

9. Even otherwise and on consideration of other concomitant aspects of the matter, we are satisfied that the judgment convicting the accused as aforesaid is eminently sustainable and does not justify interference by way of the present appeal. This appeal is, therefore, dismissed.

(Y.B. Bhatt, J.)

(J.R. Vora, J.)

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